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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

March 21, 1994

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Local Multipoint Distribution Service
CC Docket No. 92-297

Dear Mr. Caton:

On behalf of Suite 12 Group, enclosed please find an original and nine (9) copies of its Comments filed in response to a Public Notice released February 11, 1994 in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner
Counsel for Suite 12 Group

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

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)
)
Rulemaking to Amend Part 1 and)
Part 21 of the Commission's Rules)
to Redesignate the 27.5-29.5 GHz)
Frequency Band and to Establish)
Rules and Policies for Local)
Multipoint Distribution Service)
_____)

CC Docket No. 92-297

RM-7872; RM-7722

COMMENTS OF SUITE 12 GROUP

Suite 12 Group ("Suite 12"), by its attorneys, hereby files Comments in response to the Public Notice in the above-referenced proceeding (released February 11, 1994) which seeks comment regarding the proposed establishment of an Advisory Committee ("the Committee") to negotiate proposed regulations for the sharing of the 27.5 - 29.5 GHz band by the Local Multipoint Distribution Service ("LMDS") and satellite services.

Introduction

Suite 12 is the inventor of the CellularVision technology for LMDS, which is currently being used by the only commercially licensed LMDS service to offer a cable television alternative in New York.¹ Suite 12 also is

¹ CellularVision of New York, L.P., holds a regular commercial license to provide terrestrial point-to-multipoint services in the 28 GHz band in the New York City Primary Metropolitan Statistical Area, and currently provides subscribers with a 49-channel alternative to cable television service.

the original advocate of the Commission's proposed reallocation of the 28 GHz band for LMDS. The Commission has recognized Suite 12's leadership role in creating LMDS by tentatively awarding it with a pioneer's preference.² As a result, Suite 12 has a keen interest in the rapid nationwide deployment of LMDS through the efficient and robust use of the currently largely unused 28 GHz band. The Commission has appropriately recognized the important role of Suite 12 in this proceeding by including it among the interested parties in paragraph eight of the Public Notice.

Suite 12 has demonstrated through the submission of substantial technical and policy papers in the record in this proceeding³ that there are numerous compelling public interests that support the prompt deployment of

² See Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, 8 FCC Rcd 557 (1993).

³ See "LMDS Summary Paper," filed January 12, 1994; "Satellite Earth Stations Operating in the 28 GHz Band Will Not Interfere with LMDS Receivers," filed January 12, 1994; "Broad-based Consumer and Press Support for Suite 12's LMDS Technology," filed January 12, 1994; "Telephony and Other Secondary Services Available Through Suite 12's LMDS Frequency Plan," filed January 11, 1994; "Satellite Usage at 28 GHz," filed January 10, 1994; "Frequency Reuse in Cellular LMDS," filed January 6, 1994; "The LMDS System Does Not Interfere with NASA ACTS Satellites — Supplemental Rebuttal," filed January 6, 1994; "LMDS Cannot Interfere with Motorola IRIDIUM (LEO)," filed January 5, 1994; "Supplement to CellularVision Modulation Choice," filed December 20, 1993; "LMDS is Not Viable in the 40.5-42.5 GHz Band," filed December 16, 1993; "LMDS Does Not Interfere with NASA ACTS," filed November 24, 1993; "The Need for Wideband Services," filed November 22, 1993; "The CellularVision Modulation Choice," filed November 22, 1993.

LMDS with two 1 GHz licenses in the 28 GHz band, including:

- LMDS is a high quality, low-cost cell-based wireless platform for delivering an array of interactive video, telephony and data services;
- LMDS is an immediate competitive alternative to cable television;
- The array of services offered by LMDS can have important consumer benefits in a variety of applications, including public service, education, medicine and business;
- Due to its low-cost deployment, LMDS offers immediate universal access to the Information Superhighway to all consumers, regardless of social or economic level;
- Nationwide deployment of LMDS will create significant U.S. jobs, particularly in the beleaguered technology-oriented defense industry;
- LMDS, as a U.S.-driven technology, represents an important potential export commodity, particularly throughout much of the developing world which lacks modern telecommunications infrastructures;
- Like HDTV, the U.S. has the opportunity to provide the requisite leadership to establish the appropriate global standard for LMDS at 28 GHz; and
- Public auctions of licenses for LMDS can be expected to immediately generate substantial revenues for the U.S. Treasury from the now grossly under-utilized 28 GHz band.

Notwithstanding these compelling public interests, the single issue impeding the immediate deployment of LMDS is the misguided technical concern regarding the sharing of the 28 GHz band between LMDS and the satellite interests. Suite 12 has demonstrated in the record in this proceeding that co-primary sharing of the 28 GHz band is readily feasible, and that

specific, non-intrusive techniques are available, including frequency interleaving and alternate polarization, that can be easily administered from a regulatory standpoint to eliminate any potential for interference between the two services. Thus, Suite 12 welcomes the opportunity to work in a constructive process with the parties potentially affected, under the Commission's guidance, to demonstrate how co-primary sharing of the 28 GHz band between LMDS and the satellite interests can be realized in the public interest.

Use of Negotiated Rulemaking

Suite 12 generally supports the Commission's proposal to resolve the technical sharing issue by a well-managed, focused and expedited negotiated rulemaking. To the extent that all of the concerned parties remain committed to negotiate in good faith and work towards a consensus that will allow LMDS and satellite service to co-exist in the 28 GHz band, Suite 12 believes that a negotiated rulemaking is an appropriate way to promptly resolve the single outstanding issue, spectrum efficient co-shared use of the grossly under-utilized 28 GHz band.

Suite 12 is concerned, however, that the negotiated rulemaking process may be exploited by those interests seeking to preserve the status quo and delay or even scuttle the immediate nationwide deployment of the proven, consumer-friendly LMDS. Suite 12's concerns are exacerbated by the projected large size of the Advisory Committee contemplated by the

Commission (i.e., between 20 and 25, as noted in paragraph 10). The large group dynamic may inhibit progress, and provide a shield of anonymity for participants who do not approach the process with the requisite good faith commitment that is needed to ensure that the public interest benefits attendant to full and immediate utilization of the 28 GHz band are realized.

In this regard, Suite 12 strongly echoes the view of Commissioner Barrett, who, while generally supportive of the use of a negotiated rulemaking to resolve the technical sharing issues in this proceeding, expressed appropriate concern that the process may be used as a barrier to delay the market entry of viable, innovative new services and technologies, particularly from small businesses.⁴ Consistent with Commissioner Barrett's view that the Commission must monitor the evolution of this process very closely, Suite 12 urges the Commission to be vigilant in scrutinizing the conduct of the participants to ensure that all are continuously working vigorously and with intellectual honesty towards the development of a technically sound consensus that will best serve the broadest possible array of public interests. Suite 12 believes that the proposed Committee has the potential to be successful only through such aggressive monitoring of its progress and objective accountability of its members by the Commission. Thus, Suite 12

⁴ See Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Second Notice of Proposed Rulemaking, FCC 94-12 (released February 11, 1994), Statement of Commissioner Andrew C. Barrett.

views the role of a trained and tenacious facilitator, as well as the Commission's representative on the Committee, Thomas Tycz, as crucial to the successful outcome of the negotiations.

Committee Membership

As to the composition of the Advisory Committee, Suite 12 supports the Commission's interest, as expressed in paragraph 10 of the Public Notice, in receiving membership applications from public interest groups, user groups, educators and academics. Since the primary issue of sharing in the 28 GHz band places the embryonic, would-be competitive new LMDS industry — comprised mostly of small, entrepreneurial businesses — at a negotiating table potentially dominated by well-financed representatives of the enormous corporations who make up the well-established satellite industry, Suite 12 believes that the addition of interested parties who can speak directly for consumer interests is essential to achieving the requisite balance among the LMDS Committee's membership. Moreover, since public interest advocates often have severe financial constraints, Suite 12 believes that the Commission should waive any costs of participating on the Committee for such non-profit groups. Moreover, these groups, if interested in the proceeding but unable to participate on a full-time basis, should be invited by the Commission to provide written submissions expressing their concerns which the Committee will formally consider. Without this flexibility for those interested, public spirited groups, it is not likely that the important voices of such groups will

be adequately heard in this proceeding.

Scope of Issues to be Addressed

In paragraph six of the Public Notice, the Commission has appropriately framed the primary issue to be resolved in this proceeding — the development of technical rules for LMDS and/or the satellite services that will maximize sharing of the spectrum between the services. In addition, however, the Commission directs the Committee to provide an analysis of the benefits of its proposed solution as opposed to other options, and sets forth a number of factors to be addressed. Those factors include the definition of relevant product and geographic markets, degree of competition within the relevant markets, stimulation of new technologies and services, contribution to the national telecommunications infrastructure, creation of jobs and economic growth. These issues are extremely important to the ultimate formulation of sound public policy that will immediately advance numerous important consumer and governmental interests; thus, if the Committee fails to reach a consensus and the Commission has to choose between the proposed services for the 28 GHz band, these points must be fully developed in the record before the Committee process concludes, even without a consensus. However, in the negotiated rulemaking, Suite 12 believes that the primary focus of the Committee initially should be on the technical sharing issue, as the resolution of this issue in a manner which allows for co-primary sharing of the 28 GHz band between LMDS and the satellite interests will

maximize spectrum efficiency and best serve the public interest.

In paragraphs seven and eight of the Public Notice, the Commission has invited both fixed satellite service applicants and service providers, as well as mobile satellite service applicants, to participate in the negotiated rulemaking. With such a disparate group of interests expected to be at the negotiating table, Suite 12 is concerned that a number of ancillary issues pertaining solely to the satellite services may be raised that will unduly complicate the negotiations and divert attention away from the key issue of sharing between LMDS and the satellite interests in the 28 GHz band. Suite 12 urges the Commission to keep the parties focused on the narrow, relevant issue at hand, namely LMDS and satellite sharing in the 28 GHz band, and to reject any efforts to add issues which do not directly relate to that issue.

Representation on the Committee

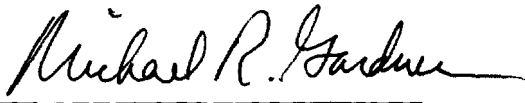
Suite 12 will be represented on the Advisory Committee by one of its founders and principals, Shant Hovnanian. If the Commission creates a technical subcommittee to address the technical issues attendant to co-primary sharing of the 28 GHz band, Suite 12's representative on the technical subcommittee will be its inventor and one of its principals, Bernard Bossard. In the unlikely event that the Commission does not establish a technical subcommittee, Mr. Bossard would then serve as a co-chair to Mr. Hovnanian on the Advisory Committee, where he would speak for Suite 12 in regard to technical issues. Mr. Hovnanian and Mr. Bossard are both qualified to

represent Suite 12's interests in this proceeding, and will actively participate in good faith. While each member of the Committee will designate a representative, the Commission should provide flexibility to allow surrogates to speak on behalf of Committee members on particular subjects in which a given expertise will advance the deliberations of the Committee.

Conclusion

Accordingly, as set forth above, Suite 12 supports the Commission's use of a negotiated rulemaking to resolve the technical sharing issue in this proceeding, subject to the concerns raised above, and looks forward to the commencement of negotiations.

Respectfully submitted,
Suite 12 Group

By: 

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